REMARKS

Claims 1-24 are currently pending in the present application. In the Office Action, Claims 1-24 were rejected under 35 U.S.C. §102(e) as being anticipated by Hall (U.S. 5,991,618).

Please cancel claims 5, 9, 11 and 13-19 without prejudice. Please add new Claims 25 and 26. Please amend Claims 1, 3, 4, 6, 8, 10, 12, 20 and 22-24 as set forth herein. No new matter has been added.

Regarding the rejection of independent Claims 1, 4, 6, 9, 10, 13-15, 18, 20, and 23 under §102(e), the Examiner states that Hall anticipates each and every element of the claims. Hall discloses a method and system for estimating a communication mode quality in a wireless communication system.

It is well known that to anticipate a claim, the reference must teach every element of the claim. M.P.E.P. §2131, the section on anticipation, clearly sets forth the requirements. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. V. Union Oil Co. Of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

First, as was previously presented in the prior Response, each and every pending claim is directed to a node B (or base station) scheduling method. Since Hall has no relation to node B scheduling, Hall cannot anticipate any of the claims. The Examiner never addressed this argument.

Second, among all of the independent claims, each of independent claims 1, 4, 6, 10, 20 and 23 recite a node B receiving certain units of information. Since Hall does not recite a node B, Hall cannot anticipate a node B receiving information.

Third, among all of the independent claims, Claims 1, 4, 6, 10, 20 and 23 recite that certain units of information are received from a user equipment (UE) and other units of information are received from a radio network controller (RNC). Hall does not teach or disclose where any of its information is received from, and therefore Hall cannot anticipate the claims of the present application.

It is respectfully submitted that the Office Action contains an improper analysis of the terms contained in the claims, and misapplied assumptions contained in the Response to Arguments section of the Office Action. M.P.E.P. §2111.01, directed to the plain meaning rule, clearly states that the words of a claim must be given their "plain meaning" ***unless*** they are defined in the specification.

The current specification clearly defines each and every term used in the claims, and therefore the terms of the claims must be accorded their defined meanings.

It is well settled that during examination, the claims must be interpreted as broadly as their terms reasonably allow. In re American Academy of Science Tech Center, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). This means that the words of the claim must be given their plain meaning ***unless*** applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (discussed below); Chef America, Inc. v. Lamb-Weston, Inc., 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004).

Applicant has provided a clear definition for the terms used in the claim, and therefore, the claim must be read according to those definitions contained in the specification.

Claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification in giving them their 'broadest reasonable interpretation'." 710 F.2d at 802, 218 USPQ at 292 (quoting In re Okuzawa, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976)) (emphasis in original).

It is not reasonable to interpret the claims of the present application in any manner that changes the definitions provided in the specification to the terms of the claims.

Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. Toro Co. v. White Consolidated Industries Inc., 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999).

Applicants therefore respectfully request, and are entitled to, an interpretation of the claims that is controlled by and consistent with the definitions contained in the written description.

The Examiner cites the power margin requirement as being an equivalent of the transmission power margin information of the UE. These elements are not equivalent. The power margin requirement is not the equivalent to the transmission power margin information of the UE. As depicted in col. 3, lines 15-23 of Hall, the power margin requirement is only a value defined for a certain communication mode. The transmission power margin information of the UE is defined for a UE. These two elements are not equivalent.

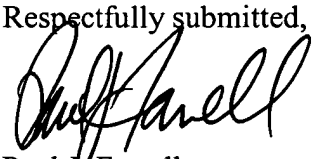
Based on at least the foregoing, withdrawal of the rejection of independent Claims 1, 4, 6, 10, 20, and 23 under §102(e) is respectfully requested.

Further, with regard to Claims 1, 4, 6, 10, 20 and 23, it is respectfully submitted that the comparison of the power margin requirement to the uplink channel condition information, the power margin to the transmission power class information, and a data rate of the UE to a communication mode quality is unsupportable. The transmission power class information represents the total transmission power of the UE. The transmission power class information is not equivalent to the power margin representing available power of the UE.

Independent Claims 1, 4, 6, 10, 20 and 23 are believed to be in condition for allowance. Without conceding the patentability per se of dependent Claims 2, 3, 7, 8, 12, 21, 22, and 24-26, these are likewise believed to be allowable by virtue of their dependence on their respective amended independent claims. Accordingly, reconsideration and withdrawal of the rejections of dependent Claims 2, 3, 7, 8, 12, 21, 22, and 24 is respectfully requested.

Accordingly, all of the claims pending in the Application, namely, Claims 1-4, 6-8, 10, 12 and 20-26, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

Respectfully submitted,



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